

**Title:** Administrative Review

**Purpose**

An administrative review is the procedure requested by a retailer/farmer to determine if they have the right to contest a decision made by the State WIC Program. An abbreviated administrative review shall be provided to a retailer/farmer upon request through which an appeal may be made for specific adverse actions described in the policy statement. The retailer/farmer has sixty (60) days from the date of receipt of the written notice to request an administrative review.

**Authority**

7 CFR 246.18(b), (c), (d), (e) and (f) 7 CFR 246.18(a)(1)(i), 246.18(a)(1)(ii) and 246.18(a)(1)(iii)

**Policy**

It is the policy of the Montana WIC Program to allow a retailer an administrative review to contest a punitive decision rendered by the Montana WIC Program.

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**I. Introduction**

- A. The Montana WIC Program will provide, upon request, a full administrative review to a retailer who has received the following adverse actions:
- B. Denial of authorization based on:
  - 1. Retailer selection criteria for minimum variety and quality of authorized supplemental foods and the vendor is attempting to circumvent a sanction;
  - 2. Termination of an agreement for cause;
  - 3. Disqualification; and
  - 4. Imposition of a fine or a civil money penalty in lieu of a disqualification.
- C. A retailer/farmer may request an administrative review due to receipt of an adverse action.
- D. At the time an adverse action is invoked, a written notice will be sent to the retailer/farmer. The notice will contain the effective date, the procedure to follow to obtain an administrative review (the notice must specify which type of review may be requested) and the timeframe for the request. If the adverse action is related to disqualification, the notice will contain the following statement: "This disqualification from Montana WIC may result in disqualification as a retailer in SNAP. Such disqualification is not subject to administrative or judicial review under SNAP.
- E. A disqualification as a result of a conviction of trafficking will be effective immediately.

**II. General Conditions**

- A. The retailer has sixty (60) days from the date of receipt of the written notice of adverse action to request an administrative review. The request for an administrative review may be made through the Local Agency Retailer Coordinator or the Montana WIC State Office. The request may be written or verbal.
- B. The Montana WIC Program will determine the type of administrative review.

- C. If a retailer/farmer is allowed to continue operation as a Montana WIC Retailer during the process of an administrative review, the terms of the Montana WIC Retailer/Farmer Agreement are still in force and the retailer must comply with the terms.
- D. If the decision of the administrative review upholds the adverse action, this will be the final action taken by the Montana WIC Program. Any adverse action related to the administrative review which has not already taken effect, must do so on the date the retailer receives the notification of the decision.
- E. The retailer may appeal the administrative review decision in District Court in the First Judicial District of the State of Montana, in and for the County of Lewis and Clark within thirty (30) days of receiving the written decision.

**III. Procedure for a Full Administrative Review**

- A. The Montana WIC Program will set the date for a full administrative review within three weeks of the receipt of the request.
- B. The retailer will be notified in writing within a minimum of ten days in advance of time and place of the full administrative review.
- C. A full administrative review for a retailer will be held in the county in Montana in which the business operation in question is physically located.
- D. The full administrative review will be conducted by a fair and impartial official according to 7 CFR 246.18 and applicable portions of Title 2, Chapter 4 Montana Code Annotated, whose decision will rest solely on the evidence presented at the hearing and the state's approved policies and procedures governing the Montana WIC Program.
- E. The retailer will have the opportunity to:
  - 1. Review the case file prior to the full administrative review;
  - 2. Representation by legal counsel;
  - 3. Cross-examine adverse witnesses (protection of the identity of investigators may result in the examination being conducted "in camera" or with the witness behind a protective screen);
  - 4. Present his/her/its case; and
  - 5. Reschedule the full administrative review date once upon request.
- F. The retailer will be notified of the decision of the full administrative review within ninety (90) days of the receipt of the retailer's request for an administrative review. The notification must include the basis for the decision. Failure on the state's part to meet the decision notification timeframe is not grounds for overturning the adverse action.

**III. Procedure for an Abbreviated Administrative Review**

- A. The Montana WIC Program will provide, upon request, an abbreviated administrative review to a retailer/farmer who has received the following adverse actions:
- B. Denial of authorization based on:
  - 1. Business integrity;
    - a. Current SNAP disqualification or civil money penalty for hardship;

2. Montana's retailer selection criteria if the basis of the denial is a:
  - a. WIC retailer sanction;
  - b. SNAP withdrawal of authorization or disqualification; or
  - c. failure to meet cost containment requirement.
- C. Montana's retailer limiting criteria;
- D. Submission of the application outside the timeframes established for accepting and processing applications;
- E. Termination of the agreement because of change in ownership, location, or cessation of operations;
- F. Disqualification based on:
  1. A trafficking conviction;
  2. Imposition of a SNAP civil money penalty for hardship; or
  3. A mandatory sanction imposed by another WIC state agency; or
- G. Civil money penalty imposed in lieu of disqualification based on a mandatory sanction imposed by another WIC state agency.
- H. A civil money penalty imposed in lieu of disqualification based on a disqualification imposed by FSP.
- I. Denial of authorization based on the fact that the retailer was not authorized by SNAP.
- J. Application of peer group and above 50% status determination.

#### **IV. Denial of Administrative Review**

- A. The Montana WIC Program will not grant an administrative review if requested by the retailer and the basis of the request is:
- B. The validity or appropriateness of
  1. Montana's retailer limiting criteria;
  2. Montana's retailer/farmer selection criteria; or
  3. Montana's participant access criteria and the participant access determination;
  4. Peer group criteria.
- C. The determination by the Montana WIC Program as to whether the retailer/farmer had an effective policy and program in place to prevent trafficking and the retailer/farmer was not aware of, did not approve of and was not involved in the commission of the violation;
- D. Expiration of the agreement;
- E. Disqualification from the Montana WIC Program as a result of disqualification from SNAP;
- F. Disputed food instrument payments or retailer/farmer claims (other than the opportunity to justify or correct a retailer overcharge or other error).

- G. The Montana WIC Program's determination to include or exclude an infant formula manufacturer, wholesaler, distributor or retailer from the State Agency list.
- H. The State agencies determination whether to notify a retailer in writing when an investigation reveals an initial violation for which a pattern must be established in order to impose a sanction.